



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**FILED**

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**C2211014**

Electrify America LLC,

Complainant,

vs.

San Diego Gas and Electric Company (U902E),

Defendant.

**Case**

Complaint  
(Rule 4.2)

COMPLAINANT	DEFENDANT
Electrify America, LLC Attn: Bob Sweetin 4675 W. Teco Ave Suite 230 Las Vegas, NV 89118 T: 702-600-9949 E-mail 1: <a href="mailto:rds@dvclaw.com">rds@dvclaw.com</a> E-mail 2: <a href="mailto:daf@dvclaw.com">daf@dvclaw.com</a> E-mail 3: <a href="mailto:blc@dvclaw.com">blc@dvclaw.com</a>	San Diego Gas & Electric Company (U902E) Greg Anderson, Regulatory Tariffs Manager 8330 Century Park Court, CP32F San Diego CA 92123-1548 T:858-654-1717 E-mail 1: <a href="mailto:GAnderson@SDGE.com">GAnderson@SDGE.com</a> E-mail 2: <a href="mailto:SDGETariffs@sdge.com">SDGETariffs@sdge.com</a>

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

(B) Electrify America, LLC	}	CASE _____
Complainant,		(A) Have you tried to resolve this matter
vs.		informally with the Commission's Consumer
		Affairs staff?
(C) San Diego Gas & Electric		_____ / _____
		YES NO
Defendant.	}	Has staff responded to your complaint?
_____		_____ / _____
		YES NO
		Did you appeal to the Consumer Affairs
		Manager?
		_____ / _____
		YES NO
		Do you have money on deposit with the
		Commission?
		_____ / _____ / \$
		YES NO AMOUNT
		Is your service now disconnected?
		_____ / _____
		YES NO

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**COMPLAINT**

**I. INTRODUCTION**

Complainant, Electricity America, LLC ("Electrify America"), located at 2003 Edmund Halley Drive 2nd Floor, Suite 200, Reston, VA 20191, and phone number 1-833-632-2778, respectfully shows that Defendant, San Diego Gas & Electric ("SDG&E" or "Company"), located at 8326 Century Park Court, San Diego, California, 92123, 1-800-411-7343, has presented and

maintains an interpretation of SDG&E Schedule EV-HP tariff (“tariff”) language that is unsupported by both a plain reading of the tariff and previously submitted evidence and testimony in the docket adopting the Tariff. SDG&E’s current interpretation and application of the tariff unreasonably denies Electrify America the right to adjust subscription levels in a manner consistent with the plain language of the tariff leading to excessive charges incurred by Electrify America.

## II. BACKGROUND

SDG&E filed an application with the California Public Utilities Commission (“CPUC” or “Commission”) for approval of the Company’s Electric Vehicle (“EV”)-High Power (“HP”) charging rate on July 3, 2019<sup>1</sup> which the Commission approved on December 17, 2020.<sup>2</sup> SDG&E Schedule EV-HP “replaces the traditional maximum demand charge with a subscription charge billed monthly based on the customer’s subscription level.”<sup>3</sup> Under Schedule EV-HP, customers “select their preferred kW subscription level. The customer’s subscribed power level should exceed their maximum demand. If the maximum demand exceeds the subscription level[,] the subscription level will be increased.”<sup>4</sup> The customer shall pay a monthly subscription charge based on their subscription level.”<sup>5</sup>

Contained within the tariff are Special Conditions. Specifically, Special Condition 4 establishes that “[t]he subscription charge shall consist of increments of 10 kW for customers

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<sup>1</sup> Docket A-19-07-006, Application of San Diego Gas and Electric Company (U 902-3) For Approval of Electric Vehicle High Power Charging Rate (July 3, 2019).

<sup>2</sup> Advice Letters 3691-E, AL 3691-E-A, AL 3691-E-B, AL 3691-E-C, at 2 (Dec. 21, 2021).

<sup>3</sup> Cal. P.U.C. Sheet No. 35671-E.

<sup>4</sup> See Special Condition 5 of Cal. P.U.C. Sheet No. 35671-E (“If the customer’s maximum demand exceeds their subscription level for three consecutive months SDG&E will increase the subscription level to a level commensurate with the customer’s highest maximum demand within the past three consecutive months. The customer must remain at this subscription level for an additional three months. If the customer’s maximum demand exceeds their subscription level for six months in the rolling twelve-month period, their subscription level will be immediately increased consistent with their maximum demand in this rolling twelve-month period. The customer must remain at this subscription level for three consecutive months before they have the option to lower their subscription level.”).

<sup>5</sup> Cal. P.U.C. Sheet No. 35671-E.

with maximum demand less than or equal to 150kW and 25 kW for customers with maximum demand greater than 150 kW. *The subscribed power level can be altered once per month.*”<sup>6</sup>

Special Condition 5 discusses overages of the Subscription Charge, and establishes the following:

If the customer’s maximum demand exceeds their subscription level for three consecutive months SDG&E will increase the subscription level to a level commensurate with the customer’s highest maximum demand within the past three consecutive months. The customer must remain at this subscription level for an additional three months. If the customer’s maximum demand exceeds their subscription level for six months in the rolling twelve-month period, their subscription level will be immediately increased consistent with their maximum demand in this rolling twelve-month period. The customer must remain at this subscription level for three consecutive months before they have the option to lower their subscription level.<sup>7</sup>

At issue in this matter is the phrase under Special Condition 4 allowing a customer to alter its power level once a month. Electrify America, under the language of the tariff, should be permitted to change its subscription level “once a month.” SDG&E has prevented Electrify America from making such reasonable changes by insisting on what SDG&E refers to as “go-forward” selection. That is, the tariff language has been unreasonably extended and interpreted to require a forecast in advance of a billing period starting. This interpretation inhibits customer subscription updates necessary to respond to an issued bill and avoid another subsequent overage. It has deprived Electrify America of using the tariff as intended by extending periods of undersubscription and accordingly triggered Special Condition 5 with associated financial impacts.

In adopting the tariff, the Commission’s Decision stated that “[a]t the end of the first month in which a customer exceeds their subscription level, SDG&E will notify the customer that their

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<sup>6</sup> Cal. P.U.C. Sheet No. 35671-E. (*emphasis added*).

<sup>7</sup> Cal. P.U.C. Sheet No. 35671-E. (*emphasis added*).

maximum demand exceeded their subscribed demand level. *To avoid exceeding their subscription level again, the customer can either increase their subscription level or limit their demand.*”<sup>8</sup>

SDG&E’s implementation of the tariff unreasonably inhibits Electrify America’s ability to avoid exceeding its subscription level again as prescribed by the Decision and as expected by Electrify America during its participation in the underlying rate case.

Generally, the issue arises when an initial billing period ends, but SDG&E is unable to provide relevant billing statements quickly enough to a customer so that a customer may make the necessary changes. By the time the customer receives the information regarding the initial billing period, SDG&E claims that the subsequent billing period has already commenced, and no change can be made related to the subsequent billing, thereby locking the customer into another period of undersubscription and thus a subsequent overage.

SDG&E’s position is not rooted in the language of the tariff, precedential authority, or direction from the Commission. More critically, SDG&E’s interpretation is not supported by SDG&E’s own submitted testimony in the docket adopting the tariff, which, by resolving through settlement, deprived interested parties the ability to ensure the tariff would be applied in a reasonable way.

Despite good faith efforts, Electrify America has been unsuccessful in its efforts to resolve this matter with SDG&E. Electrify America has continued to direct SDG&E to language of the tariff for a more accurate interpretation of the Commission-approved language, to no avail. As set forth in this Complaint, SDG&E’s interpretation is flawed and contrary to the intent of the terms of the tariff.

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<sup>8</sup> Decision 20-12-023, P. 20.

### III. STATEMENT OF RELEVANT FACTS

SDG&E refuses to allow Electrify America the ability to change Electrify America's subscription rate once a month for the immediate billing cycle, which violates the EV-HP tariff. In early January 2022, Electrify America sought to begin taking service under Schedule EV-HP and asked SDG&E representatives when monthly subscription selections should be submitted relative to the billing cycle. SDG&E responded that selections were required before the billing cycle and that "[t]he subscription selection would be on a go-forward basis...If you want to change your subscription, when you call in it will be from that date until the next time you advise us that your new subscription will be in effect. More of a forecast than hindsight."<sup>9</sup> It is Electrify America's understanding of this response that a subscription charge will be modified "when you call it in" and will remain at this new level "until the next time" SDG&E is advised of a request modification. However, this has not been the implementation of the tariff by SDG&E. Rather, SDG&E has incorrectly focused on the "more of a forecast than hindsight" portion of the answer.

In mid-January, Electrify America requested additional clarity regarding this initial response and received the following example within the additional discussion from SDG&E:

For example, if you want a subscription of 50 for January but you want a subscription of 75 for February you'll need to call us on or before 2/1/22 to solicit the change. So if you call Jan 12 for Feb 1 that's fine but you can't call Feb 5 for Feb 1. **I liken this to insider trading. You can't see the use and then pick to stay inside the lines.** You can forecast and make the best educated guess, you can change it if you've chosen wrong but it's always ahead of what is going to happen to your accounts. So, if you chose 50 but your demand was 65 you'll see the special conditions of the tariff kick in.<sup>10</sup>

Additionally, SDG&E further clarified its position that:

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<sup>9</sup> See attached email correspondence between SDG&E and Electrify America, Electrify America Exhibit A, at 003.

<sup>10</sup> Electrify America Exhibit A at 001.

[Electrify America] cannot change the subscription at the end [of a billing cycle]. It's not that you['d] need to subscribe on the first day of the cycle, it's that you cannot retroactive a change. If you want to make a change, you must notify us prior to the date of the change you desire / the only changes to the subscription level would be on a go-forward basis...**These changes ensure that you are not already privy to your usage** and then making changes, constituting my likening to insider trading. You can estimate and utilize any software you want to get extremely accurate demand data but changes would still be forecasting.<sup>11</sup>

Further in communication with Electrify America, SDG&E has referenced Electric Rule 12 as justification for its tariff interpretation. The Company claims that Rule 12 establishes that “the change shall become effective for service rendered after the next regular meter reading following the date of notice to the Utility, based on the availability of metering and billing requirements....You may make any subscription changes you wish once per billing period, or otherwise referred to as monthly, ahead of the period you wish to change.”<sup>12</sup> Rule 12 is inapplicable to the instant case, given the fact that Electrify America is not seeking a change in rate schedule, but rather is operating within the confines of the tariff of its current rate schedule.

#### IV. ARGUMENT/COMPLAINT

The issue in this case is whether SDG&E's interpretation of Special Condition 4 to include the requirement that the altering of a subscription charge be forecasted, rather than based on the actual usage needs of the customer (e.g., from an issued bill with an overage notification), is permissible. Electrify America asks this Commission to find that SDG&E's additional requirement is not supported by the plain language of the tariff and that the tariff be applied as written and adopted. SDG&E's interpretation conflicts with the plain language of the tariff, the policy ideas

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<sup>11</sup> Exhibit A at 0008..

<sup>12</sup> Id. at 0006.

advanced by SDG&E in its application seeking approval of the tariff, and SDG&E's own testimony provided to the Commission when advocating for adoption of the tariff.

To be clear, Electrify America is not looking to pay less to SDG&E than what it is obligated to pay for electric service. Rather, Electrify America is merely seeking to utilize the plain language of the tariff to either avoid over-payment for subscription blocks, or pay its requisite share of subscription blocks to avoid a penalty that might otherwise be imposed by Special Condition 5.

#### A. LEGAL STANDARD

The law of tariff interpretation is well settled. As this Commission has previously recognized in numerous similar cases interpreting tariffs, "Commission approved tariffs have the force and effect of law."<sup>13</sup> Because tariffs carry the force and effect of law, tariffs are interpreted using the traditional principles of statutory construction.<sup>14</sup> Specifically, the CPUC, in interpreting a tariff, will (1) look at the language of the tariff and apply its ordinary meaning; and (2) interpret words in context and in a reasonable, common-sense way.<sup>15</sup> If the tariff is clear, the analysis is over and the Commission need not look further to apply any interpretation.<sup>16</sup>

If the tariff is ambiguous, the Commission may look to sources like regulatory history and the principles of statutory construction to interpret the tariff.<sup>17</sup> Where a tariff is ambiguous it will generally be construed against the drafter (the utility) and in favor of the party obligated to pay the tariff charges.<sup>18</sup> The only exception to this rule is where a construction in favor of the customer

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<sup>13</sup> Dyke Water Company v. Public Utilities Commission of the State of California (1961) 56 Cal.2d 105, 123; see also 2016 Cal. PUC LEXIS 40, \*2 (Cal. P.U.C. January 28, 2016).

<sup>14</sup> Zacky & Sons Poultry Co. v. Southern California Edison Company [D.03-04-058] (2003) at p. 6, fn. 4.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> 2016 Cal. PUC LEXIS 40, \*2 (Cal. P.U.C. January 28, 2016); see also 1995 Cal. PUC LEXIS 459, \*28, 60 Cal. Pub. Util. Comm'n 2d 462 (Cal. P.U.C. July 6, 1995) citing Lennox Industries, Inc. v. California Cartage Co. (1980) 4 CPUC 2d 26).



would not be reasonable.<sup>19</sup> Unreasonable interpretations include those that are strained, produce absurd results, or are unfair.<sup>20</sup>

“Claimed ambiguities must have a substantial basis and be considered in light of Commission decisions which set forth the policy on the matter in dispute.”<sup>21</sup> The Commission has the discretion to determine whether a requested interpretation is “reasonable.”<sup>22</sup>

**a. The Plain Language of Special Condition 4 is Not Ambiguous and Establishes That Electrify America May Alter its Subscribed Power Level Once a Month.**

Electrify America’s position in this case is straightforward: the language of the tariff allows the subscribed power level to be altered once per month.<sup>23</sup>

“The starting point of tariff interpretation is to look to the plain language of the tariff, which “generally provide[s] the most reliable indicator of legislative intent.”<sup>24</sup> “The Commission follows the rule that ‘[i]f the statutory language is clear and unambiguous our inquiry ends.’”<sup>25</sup> This Commission has long applied the “well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded” in the context of interpreting tariffs.<sup>26</sup>

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<sup>19</sup> Pacific Gas and Electric Company (1985) 19 CPUC 2d 105, 110.

<sup>20</sup> Id.

<sup>21</sup> 60 Cal. Pub. Util. Comm’n 2d 462 (Cal. P.U.C. July 6, 1995) citing Pacific Gas and Electric Company, (1985) 19 CPUC 2d 105, 110.

<sup>22</sup> 1995 Cal. PUC LEXIS 459, \*29, 60 Cal. Pub. Util. Comm’n 2d 462 (Cal. P.U.C. July 6, 1995) citing Hargraves Secret Service v. PT&T (1975) 78 CPUC 201, 204.

<sup>23</sup> Tariff EV-HP cite

<sup>24</sup> 2020 Cal. PUC LEXIS 767, \*4 (Cal. P.U.C. January 16, 2020) citing Murphy v. Kenneth Cole Productions, Inc. (“Murphy”) (2007) 40 Cal.4th 1094, 1103.

<sup>25</sup> Id.

<sup>26</sup> 2020 Cal. PUC LEXIS 767, \*5 (Cal. P.U.C. January 16, 2020) adopting the standard set forth in Cal. Society of Anesthesiologists v. Brown (“Brown”) (2012) 204 Cal.App.4th 390, 404.)

When interpreting a tariff, the Commission must (1) look at the language of the tariff and apply its ordinary meaning; and (2) interpret words in context and in a reasonable, common-sense way.<sup>27</sup>

Special Condition 4 reads as follows, with the relevant language in bold:

“The subscription charge shall consist of increments of 10 kW for customers with maximum demand less than or equal to 150kW and 25 kW for customers with maximum demand greater than 150 kW. ***The subscribed power level can be altered once per month.***”<sup>28</sup>

The plain language of the tariff permits a change in subscribed power level “once per month.” The term “month” is not defined, but both parties have agreed “month” and “billing cycle” are synonymous under this tariff.<sup>29</sup> The tariff contains no surrounding limiting language requiring the requested changes be filed by a date certain each month, or when such changes are to take effect. The ordinary meaning of the words “can be altered once per month,” without implied or express language directing the limitations on such alterations, should be interpreted to mean the alteration can occur at any time during the month so long as an alteration is not requested more than once. Further, the words of the tariff are clear, which by consequence means the tariff language is not ambiguous. The operative words of the tariff are commonly used, and both the grammar and combination of the words taken together do not lend themselves to any requirement that the change be made on or before a certain time/date to be operative.<sup>30</sup>

When analyzing this tariff under plain language precedent, the Commission should decide in favor of Electrify America. SDG&E’s argument in this case requires an additional requirement of timing that is outside the language of the tariff. Though SDG&E supports their position with

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<sup>27</sup>

Id.

<sup>28</sup>

Cal. P.U.C. Sheet No. 35671-E. (*emphasis added*).

<sup>29</sup>

See Electrify America Ex. A at 000002.

<sup>30</sup>

See Hardy v. Hardy (1943) 135 P.2d 615, 619; see also Hartford Fire Insurance Co. v. Macri (1992) 4 Cal.4th 318, 326 (cases holding that an ambiguity must be

certain policy considerations, these policy considerations are not relevant in interpreting the tariff under plain language principles.

The issue in this case is very similar to another case heard previously by this Commission. County of Orange v. Southern California Edison Company considered whether the customer's request that Southern California Edison be affirmatively responsible for adjusting the County's standby demand level under a time-of-use tariff was included as a requirement under the plain language of the relevant tariff in that case.<sup>31</sup> Southern California Edison argued that it was not responsible for adjusting the County's rate given that the tariff omitted "explicit, mandatory language" that might otherwise require Southern California Edison to do what the County requested.<sup>32</sup> In that case the Commission ruled for Southern California Edison, relying on California Society of Anesthesiologists v. Brown for the proposition that "when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded."<sup>33</sup> The Commission further ruled that the tariff was not ambiguous where the tariff was clear.

This case has many similarities with County of Orange v. Southern California Edison Company. Here, SDG&E, like the County of Orange, is claiming a requirement under the tariff that is not supported by the plain language of the tariff. The additional requirement implemented by SDG&E in this case is an affirmative duty being placed upon Electrify America, much like the County of Orange's position, which the Commission declined to accept. Finally, just like in County of Orange, there is no relevant contextual language that might provide support for SDG&E's position in this case. In County of Orange, a prior decision dismissing the complaint

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<sup>31</sup> 2020 Cal. PUC LEXIS 767, 2 (Cal. P.U.C. January 16, 2020), Decision 20-01-028.

<sup>32</sup> Id.

<sup>33</sup> California Society of Anesthesiologists v. Brown, 204 Cal. App. 4th 390, 404, 138 Cal. Rptr. 3d 745, 753 (Cal 1st District Court of Appeal 2012); 2020 Cal. PUC LEXIS 767, Decision 20-01-028 at 9.

(which was later upheld in the cited decision, which upheld the dismissal of the complaint), evaluated similar language within Southern California Edison’s tariff structure in that case.<sup>34</sup> In that decision, the Commission relied upon language located within another special condition of the tariff that did explicitly impute an affirmative duty upon Southern California Edison with clear, unambiguous language.<sup>35</sup>

In the instant case, no such mandatory language exists within the tariff at all that might require the timing of the subscription level request as mandated by SDG&E staff. Moreover, though not a perfect analogy, SDG&E Electric Rule 12, which is adopted under a similar framework to tariffs, governs rates and optional rates.<sup>36</sup> Under Section D of Rule 12, there is language both as to how often a change in rate can be made and also when that change might take effect. The analogy is not perfect because Electrify America is not seeking a change of rate here, but rather merely seeking to operate within its current rate under tariff Special Condition 4. However, the Commission should review the fact that SDG&E does, in other circumstances, specify when requested billing changes will take effect. Special Condition 4 has no such additional language, nor is any similar language included in any provision of the tariff.

Under a plain language analysis, and this Commission’s prior precedent in a similar matter, the Commission should decide that the tariff language in this case is clear and unambiguous. The clear and unambiguous language of the tariff and Special Condition 4 put no timing requirement on when the requested change to subscription level occurs, and as such, no such requirement should be imposed on customers under the tariff. Rather, customers should be permitted to make their change “once a month” as dictated by the tariff.

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<sup>34</sup> 2019 Cal. PUC LEXIS 100, (Cal. P.U.C. February 21, 2019); Decision 19-02-014.

<sup>35</sup> Id.

<sup>36</sup> Cal P.U.C. Sheet No. 33069-E; SDG&E Electric Rule 12.

**b. Electrify America’s Interpretation of Special Condition 4 is Consistent with the Tariff’s history and Commission policy.**

Electrify America’s interpretation of Special Condition 4 is also consistent with the tariff’s history. “Under the canons of statutory interpretation, ‘[e]ven where the plain language of the statute dictates the result, the legislative history may provide additional authority confirming the court’s interpretation of the statute.’ When examining the history of a tariff or statute, the Commission must ‘choose the construction that comports most closely with the Legislature’s apparent intent, endeavoring to promote rather than defeat [its] general purpose, and avoiding a construction that would lead to absurd consequences.’”<sup>37</sup> “Legislative history” in this context is synonymous with the proceedings before this Commission adopting the tariff.<sup>38</sup>

SDG&E’s interpretation of Schedule EV-HP requiring only month-ahead changes to a customer’s subscription level is not supported by the record in this matter. The underlying decision in this matter is replete with the Commission and State’s mandate to “reduce the effects of demand charges on electric vehicle drivers and fleets and help accelerate the adoption of electric vehicles.”<sup>39</sup> In the Commission’s decision adopting the tariff, the Commission found there is extensive discussion regarding whether the subscription charge model proposed was reasonable.<sup>40</sup> In finding the subscription charge model reasonable, the Commission noted that the proposal was made by way of a partial settlement motion between the parties.<sup>41</sup> Though that agreement was 29 pages long, including exhibits, there was no reference to the timing of requesting subscription

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<sup>37</sup> 2020 Cal. PUC LEXIS 767, P. 10-11 (Cal. P.U.C. January 16, 2020) citing Diamond v. Super. Ct., 217 Cal.App.4th 1172, at 1118 and 1189 (2013).

<sup>38</sup> See 2020 Cal. PUC LEXIS 767, P. 10-11 (Cal. P.U.C. January 16, 2020); 2019 Cal. PUC LEXIS 100, (Cal. P.U.C. February 21, 2019); 2016 Cal. PUC LEXIS 40, (Cal. P.U.C. January 28, 2016).

<sup>39</sup> CPUC Decision 20-12-023(2020), P. 6-8, citing Cal. Pub. Util. Code 740.12 (SB350); P. 19-21; see also Cal. Pub. Util. Code 740.15(a)(2) (SB1000).

<sup>40</sup> Id. at 19-21.

<sup>41</sup> Id. at 21.

blocks or when such a request could or would take effect.<sup>42</sup> Critically, all signing parties to that agreement signed it with language that affirmed the subscription rate aligned with State-level goals around the economics of EV charging and reducing the effects of demand charges as required by SB 1000.<sup>43</sup>

In adopting the tariff, the Commission noted that “[a]t the end of the first month in which a customer exceeds their subscription level, SDG&E will notify the customer that their maximum demand exceeded their subscribed demand level. *To avoid exceeding their subscription level again, the customer can either increase their subscription level or limit their demand.*”<sup>44</sup> It is clear that the Commission expected a customer to have the ability to respond to notice of overage with an immediate increase in subscribed power to avoid an overage “again.” Yet, SDG&E’s application of the tariff forces an overage “again,” in the subsequent billing period, before the ratepayer can benefit from operating within an increased subscription volume.

The matter having been settled by way of agreement, the parties do not have the benefit from the usual cross-examination or scrutiny that otherwise might apply to testimony filed by SDG&E. However, SDG&E previously embraced the idea of a change in subscription level during a billing cycle. In filing the application for the Schedule EV-HP rate, SDG&E witness Brittany Applestein Syz, the Director of Clean Transportation for SDG&E, confirmed in testimony that certain complexities may delay the effect of a billing change until the end of the billing cycle. Specifically, Ms. Syz testified that “[t]he EV-HP subscription charge will be offered in 25 kW increments. Customers will be able to choose their subscription level based on their forecasted maximum monthly demand. ***SDG&E plans to allow customers to change their subscription level***

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<sup>42</sup> Joint Adoption of Settling Parties for Commission Adoption of Settlement Agreement, filed June 30, 2020 in A-19-07-006,

<sup>43</sup> Id. at P.4-5.

<sup>44</sup> Decision 20-12-023, P. 20 (emphasis added).

*as close to month-to-month as possible*, but billing system constraints may delay changes to the subscribed demand level. For example, changes to the subscription level may not be able to be effectuated until the end of the current monthly billing cycle.”<sup>45</sup>

Ms. Syz further testified in subsequent pre-filed rebuttal testimony that subscription charge changes would be changed “easily,” and effectuated through either an account executive, submitting an email request, or at some point in the future changing the subscription through the customer’s online account.<sup>46</sup>

Electrify America understood Ms. Syz’ testimony to mean that obvious billing timing concerns might arise when implementing a new subscription rate model such as that offered in the tariff. However, there is nothing in her testimony that clarifies that the subscription level not being “effectuated until the end of the current monthly billing cycle” would mean a delay in implementation of the rate until the following billing cycle. Moreover, that would not attribute a plain meaning to the language she used. The statement “effectuated until the end of the current monthly billing cycle” provides a reasonable basis for the belief that even though certain real-world timing and administrative concerns could delay the actual change on a customer billing portal, the customer would be able to avail itself of the benefits of those subscription updates for the issued bill. This position is further bolstered by the use of the permissive “may” by Ms. Syz, clearly leaving the idea open that absent practical concerns, a billing change would be acceptable before the end of a current monthly billing cycle. In any case, to the extent the Commission finds this language ambiguous or vague, it should not rely on this language in interpreting the plain language of the tariff since it is not required to provide a plain meaning to the usual meaning of the words in the tariff, which allow for a change in subscription level “once per month.” Further,

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<sup>45</sup> Direct Testimony of Brittany Applestein Syz, Filed July 3, 2019, BS-11, lines 7-12.

<sup>46</sup> Rebuttal Testimony of Brittany Applestein Syz, Filed February 20, 2020, BAS-6, lines 1-6.

if the Commission does include this language in an ambiguity analysis, the ambiguity here was caused by the choice of words by SDG&E and Electrify America should receive the usual tariff interpretation benefit of ambiguities being interpreted to the benefit of the Customer.<sup>47</sup>

Beyond relevant history around the tariff, any interpretation that would disallow choosing a subscription level once per month would lead to an obviously absurd consequence. The very purpose of the subscription model is to “select their preferred kW subscription level.”<sup>48</sup> Disallowing that once-a-month selection for any reason not specifically stated within the tariff would functionally disallow a customer from utilizing the tariff, which would be absurd. Here, that concern is heightened where the plain language, legislative history, and adopting decision all target more flexibility around subscription levels in order to follow the State policy dictates of SB 350 and SB 1000.

It is worth noting that despite the clear language of Ms. Syz’ testimony, SDG&E in discussions prior to filing this matter has referred to a single statement in the testimony of William Saxe, an SDG&E employee. In his direct testimony, Mr. Saxe stated, “...customers will preselect the Subscription Charge kW demand level to which they want to subscribe.”<sup>49</sup> Regardless of Mr. Saxe’s statement, SDG&E did not explicitly include that requirement into the tariff language. Moreover, nothing in the settlement agreement, motion seeking approval of the settlement agreement, or decision by the Commission adopts this requirement, nor excludes the customer’s ability to update this ‘preselected’ level. If anything, the statement might lend itself to a finding of ambiguity, though Electrify America submits that the passing statement is so inconsequential when

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<sup>47</sup> See Section d, *infra*.

<sup>48</sup> EV-HP Tariff, Cal P.U.C. Sheet No. 35671-E, Sheet 1.

<sup>49</sup> Direct Testimony of William Saxe, Filed July 3, 2019, WS-2, line 16.



compared to the record itself that it should not provide such a basis to find the language subject to more than one interpretation.

Based on the foregoing, the legislative history supports the plain language interpretation advanced by Electrify America. SDG&E itself agreed with changes to subscription levels being allowed easily, absent certain billing constraints. Importantly, there is no language in the tariff or legislative history that would support SDG&E's current interpretation, which disallows Electrify America from making a change to its subscription level once a month. SDG&E's failure to consider this issue as part of the tariff as proposed should not be imputed to Electrify America. As such, the Commission should rule in favor of Electrify America that it be permitted to make changes to its subscription level once a month.

**c. SDG&E's Erroneous Reading Deprives Electrify America of Reasonable Benefit under the Tariff**

"[T]he words of a tariff must be construed in context, and different provisions relating to the same subject matter must be harmonized, to the extent possible."<sup>50</sup> SDG&E's interpretation of the tariff fails to meet this goal. The challenge and error underlying SDG&E's interpretation of the tariff is best illustrated through the application of Special Condition 5 – Overages.

As noted above, Special Condition 5 includes the imposition of mandatory subscription levels on a customer whose actual demand level exceeds the subscribed level in any six months of a rolling twelve-month period. Under SDG&E's application of the tariff, a demand level in excess of the power level subscribed in June would be communicated to Electrify America on the July bill, after the July billing cycle has begun. If, in response to this June bill, Electrify America desired to increase its subscription level to accommodate additional demand, SDG&E's interpretation would prohibit Electrify America from effectuating this change until the August

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<sup>50</sup> 2019 Cal. PUC LEXIS 100, (Cal. P.U.C. February 21, 2019).

billing cycle. Thus, one month of demand exceedance may become two months by default under SDG&E's interpretation of the tariff, notwithstanding Electrify America's efforts to ensure an adequate demand subscription. While Electrify America would be able to effectuate a subscription level change in the third month, August in this example, to avoid one consequence of Special Condition 5, two of the six months allotted for overages within any twelve-month rolling period may have been consumed. This result would occur despite Electrify America's desire to increase the subscribed amount once per month during the present billing cycle as allowed by the approved tariff. The right of the customer to change subscription levels once a month becomes a right that can only be exercised with accurate knowledge on use levels once every two months, which violates the language of the tariff and runs counter to the policies supporting the tariff.

The misapplication, or alternatively, misinterpretation of the plain language of the tariff puts customers in a position where there are few practical scenarios that would see a customer able to strategically minimize its own subscription levels as the tariff intended. Instead, customers run the very real risk of being locked in to paying a subscription level "commensurate with the customer's highest maximum demand" within either a three-month or twelve-month period. This sort of interpretation, favorable to SDG&E by collecting subscription charge revenues based on highest actual demand in a prior billing cycle rather than those levels selected by the customer, creates a windfall for SDG&E that was not anticipated in the legislative history supporting this docket. In this matter, SDG&E's interpretation has actually led to Electrify America paying for over-subscribed demand and being locked into a heightened subscription level under Special Condition 5.

SDG&E's interpretation of the tariff further creates a burden to participation under the Schedule EV-HP tariff and fails to serve the interests of the State of California in transportation

electrification by resulting in significantly higher-than-expected demand charges. In addition, the harm to certain customers, like Electrify America, is real since Electrify America has been penalized under Special Condition 5 of the tariff, because it was unreasonably prevented from exercising its rights under Special Condition 4. Requiring SDG&E to implement the plain meaning of the tariff would resolve the instant issue and more accurately reflect the purpose of the tariff.

**d. If the Commission Decides the Language of Special Condition 4 of Schedule EV-HP is ambiguous, it should still rule in favor of Electrify America.**

**i. SDG&E's Potential Argument That the Tariff is Ambiguous is Not Supported by the Legislative History or any Substantial Basis**

Where the language of a tariff is clear, the Commission need not look further to interpret the tariff. If ambiguity exists, the Commission may rely on sources beyond the plain language of the tariff, such as the regulatory history and the principles of statutory construction, to interpret the tariff. An ambiguity exists if language in a tariff may reasonably be interpreted in more than one way. The Commission has the discretion to determine whether an interpretation of a tariff sought by a party is reasonable.”<sup>51</sup>

“[G]enerally, any ambiguity in the tariff language is construed against the drafter (utility) and in favor of a customer.”<sup>52</sup> Claimed ambiguities must have a substantial basis and be considered in light of Commission decisions which set forth the policy on the matter in dispute.”<sup>53</sup> In addition, "a tariff should be given a fair and reasonable construction and not a strained or unnatural one [.]”<sup>54</sup>

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<sup>51</sup> 2019 Cal. PUC LEXIS 100, \*10 (Cal. P.U.C. February 21, 2019) citing Zacky & Sons Poultry Co. v. Southern California Edison Company [D.03-04-058] (2003) at p. 6, fn. 4.

<sup>52</sup> 2019 Cal. PUC LEXIS 100, \*10 (Cal. P.U.C. February 21, 2019) (internal citations omitted).

<sup>53</sup> Pacific Gas and Electric Company (1985) 19 CPUC 2d 105, 110.

<sup>54</sup> 1995 Cal. PUC LEXIS 459, 60 Cal. Pub. Util. Comm'n 2d 462 (Cal. P.U.C. July 6, 1995) citing Hargraves Secret Service v. PT&T (1975) 78 CPUC 201, 204.

Here, SDG&E has implicitly claimed the tariff is ambiguous as to timing and therefore subject to SDG&E's decision-making administrative authority. SDG&E's position is not supported by any precedent from this Commission, nor does it comply with standard interpretation of a tariff under principles of statutory construction.

Any claimed ambiguity must have a substantial basis. Here, there is no basis at all for SDG&E's decision to disallow monthly changes to the subscription rate. The best SDG&E offers is an attenuated and misplaced comparison to insider trading. The comparison to "insider trading" has no substantial basis when compared to the EV-HP tariff, which has as its express purpose (at least in part) the allowance of customers to change and amend their subscription rates based on actual information and usage. The EV-HP tariff has a goal minimizing guess-work and over-subscription of EV infrastructure providers, and incentivizing EV adoption and infrastructure expansion. These goals are undone if the incumbent utility is able to interpret the tariff in such a way that it would deprive any customer the ability to change its subscription rate once per month.

Given the foregoing policy considerations and legislative history, even if the Commission deems the tariff ambiguous, the tariff SDG&E's erroneous implementation of the tariff creates a burden on customers that runs directly contrary to the policy consideration discussed by the Commission in the adoption of the EV-HP tariff.<sup>55</sup> Because interpreting the tariff as requested by SDG&E would lead to a result contrary to the public policy concerns expressed through the legislative history of adopting the tariff, any ambiguity should be construed in favor of the customer, here Electrify America.

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<sup>55</sup> Decision 20-12-023, P. 7-8.

**ii. Rule 12 is Not Applicable in this Matter, but if Relied Upon by  
SDG&E Review of the Language of the Tariff and Rule 12 Supports  
Electrify America’s Position**

As previously addressed, SDG&E in its discussions attempting to resolve this matter with Electrify America has stated that Rule 12, an Electric Rule governing a change in rate schedule, which this is not, should govern since Rule 12 disallows a customer from changing a rate schedule during a billing cycle.<sup>56</sup>

Though Rule 12 should not be considered by this Commission based on its lack of relevance to the instant situation, to the extent the Commission does rely on Rule 12, the language of Rule 12 supports Electrify America’s position for two reasons. First, and most critical, Rule 12 does allow for a change in rate schedule to occur mid-cycle where a customer maintains “interval data capable meters such as smart meters.”<sup>57</sup> Since Electrify America’s sites have interval data capable meters, Electrify America would qualify to change rate schedule mid-cycle and SDG&E’s argument on that front should fail.

Second, even if the Commission were to consider the language requiring a change in rate schedule becoming effective on the next billing cycle where no advanced metering is present, the Commission should view Rule 12 under principles of statutory construction. That is, reading the Rule 12 in context, harmonizing different sections of the same subject matter to the extent possible.<sup>58</sup> In this case, that would mean identifying the fact that SDG&E did implement explicit language in Rule 12 requiring a change in rate to take effect at a time certain depending on customer circumstances. There is no such limiting language in the tariff, even though SDG&E

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<sup>56</sup> Section III, supra.

<sup>57</sup> SDG&E Electric Rule 12(D), Sheet 1, Cal P.U.C. Sheet 33069-E.

<sup>58</sup> La Collina, Dal, Lago LP v. Pacific Bell Telephone Co. (D.12-04-051 (2012) at 7).

clearly has utilized such language in the past and could have proposed such language in the settlement agreement but did not do so.

Based on the foregoing, Rule 12 should have no applicability in the current matter. However, if the Commission does find Rule 12 relevant, Rule 12's language when read in the context of the tariff at issue, supports Electrify America's position that a subscription level can be made once a month, regardless of the timing of that request in a customer's billing cycle.

## **V. CONCLUSION**

For the reasons set forth herein, Electricity America hereby requests the Commission order SDG&E to honor the plain language of the tariff and allow customers to change their subscription rate once per month for the immediate billing cycle.

### **(G) 3. Scoping Memo Information**

- (a) The proposed category for the Complaint is: Adjudicatory
- (b) Are hearings needed? Yes.
- (c) The issues to be considered are: Whether SDG&E's disallowance of Electrify America's ability to change its subscription level "once per month," even if such a request is made for the immediate billing cycle, pursuant to special condition 4 constitutes a violation of SDGE's EV-HP tariff and Decision 20-12-023 granting customers the right to avoid exceeding their subscription level again.
- (d) The proposed schedule for resolving the complaint within 12 months (if categorized as adjudicatory) or 18 months (if categorized as ratesetting) is as follows:

Prehearing Conference: 30 to 40 days from the date of filing of the Complaint.

Hearing: 50 to 70 days from the date of filing of the Complaint.

Explain here if you propose a schedule different from the above guidelines. Different Schedule NOT proposed by Complainant.

(H) Wherefor, Complainant requests an order requiring SDG&E to allow customers to change their subscription rate once per month effective immediately (e.g., for the immediate billing cycle) under SDG&E Schedule EV-HP tariff Special Condition 4.

(I) I would like to receive the answer and other filings of the defendant and information and notices from the Commission by electronic mail. My email address is: rds@dvclaw.com

Dated in Las Vegas, Nevada, this 14th day of November, 2022.

/s/ Bob Sweetin  
ROBERT D. SWEETIN  
California Bar # 288608  
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BRENT L. COLEMAN  
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2<sup>nd</sup> Floor, Suite 200  
Reston, VA 20191  
Tel: +1 (703) 872-7939  
Email: David.Appelbaum@electrifyamerica.com

## VERIFICATION

Pursuant to Rules 1.11 and 4.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC”), I, Bob Sweetin, declare that I am the authorized officer representing Electrify America, LLC (“Electrify America”) in the foregoing Complaint before the CPUC. The statements in the foregoing document are true of my own knowledge, except as to matters which are stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this November 14, 2022, at Las Vegas, Nevada.

/s/ Bob Sweetin  
Robert D. Sweetin, Esq  
Davison Van Cleve, P.C.  
4675 W. Teco Ave  
Suite 230  
Las Vegas, Nevada 89118



**ELECTRIFY AMERICA**  
**EXHIBIT A**

From:  
To:  
Subject:  
Date:

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**From:** Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Sent:** Tuesday, January 18, 2022 2:22 PM  
**To:** Shah, Jigar <[REDACTED]@electrifyamerica.com>  
**Subject:** FW: [From: External] RE: Application for EV- HP Rate

Hi Jigar,

This is the original email thread.

-Crystal

---

**From:** EV <[ev@sdge.com](mailto:ev@sdge.com)>  
**Sent:** Tuesday, January 18, 2022 11:49 AM  
**To:** Soo, Crystal <[REDACTED]@electrifyamerica.com>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** RE: [From: External] RE: Application for EV- HP Rate

Good morning Ms Crystal.

Sure thing! Using easy numbers for my example, not linked to your business or the tariff.

If you want a subscription to start on a specific day you'll need to advise on or before that day.

For example, if you want a subscription of 50 for January but you want a subscription of 75 for February you'll need to call us on or before 2/1/22 to solicit the change. So if you call Jan 12 for Feb 1 that's fine but you can't call Feb 5 for Feb 1. I liken this to insider trading. You can't see the use and then pick to stay inside the lines. You can forecast and make the best educated guess, you can change it if you've chosen wrong but it's always ahead of what is going to happen to your accounts. So, if you chose 50 but your demand was 65 you'll see the special conditions of the tariff kick in. Business wise, we have a few limited tools to help you forecast and watch your use. I assume with your business you probably have some too, but I can certainly set up time to go over some of those as well if that is helpful.

If you want a subscription of 50 for January and not jump to 75 until May, you'll need no maintenance until you're approaching the change date, and then you'll just call on or before that date (except Sundays) and we can help you. If you have an Account Executive you can always ask them too instead of calling or you could also forecast and then advise them of the schedule changes for their account maintenance purposes etc.

This first subscription option will be retroactive to Jan 4, which was the date of the original request. Ideally we would have had no hiccups and collected everything we needed from you on that day Kindra called and then execute for you going forward. It has taken longer than usual to collect the request this time, for which we are grateful for your patience and understanding as we all navigate the new pricing plan option.

Update to Cycle 22 and cycles questions:

I have received some guidance but not happy with some and I am working on that in tandem with compiling our list of cycles for these 22 and to get yours moved over to 22 for business purposes. I hope to have this all shook out this week for us, but again, please don't hesitate to come with questions!

Have a great day!

Claire

---

**From:** Soo, Crystal [REDACTED]@electrifyamerica.com>  
**Sent:** Tuesday, January 18, 2022 7:04 AM  
**To:** EV <ev@sdge.com>; Skinner, Kindra [REDACTED]@electrifyamerica.com>  
**Subject:** [EXTERNAL] RE: [From: External] RE: Application for EV- HP Rate

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Hi Claire,

Clarifying question here on when we should make our EV-HP Rate subscription selection: Could you elaborate on when we would select our subscription for a given billing cycle? Maybe using February as an example will be helpful.

Thanks,  
Crystal

---

**From:** EV <ev@sdge.com>  
**Sent:** Friday, January 14, 2022 12:15 PM  
**To:** Skinner, Kindra [REDACTED]@electrifyamerica.com>; Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Subject:** RE: [From: External] RE: Application for EV- HP Rate

Thank you!

---

**From:** Skinner, Kindra [REDACTED]@electrifyamerica.com>  
**Sent:** Friday, January 14, 2022 5:17 AM  
**To:** EV <ev@sdge.com>; Soo, Crystal [REDACTED]@electrifyamerica.com>  
**Subject:** [EXTERNAL] RE: [From: External] RE: Application for EV- HP Rate

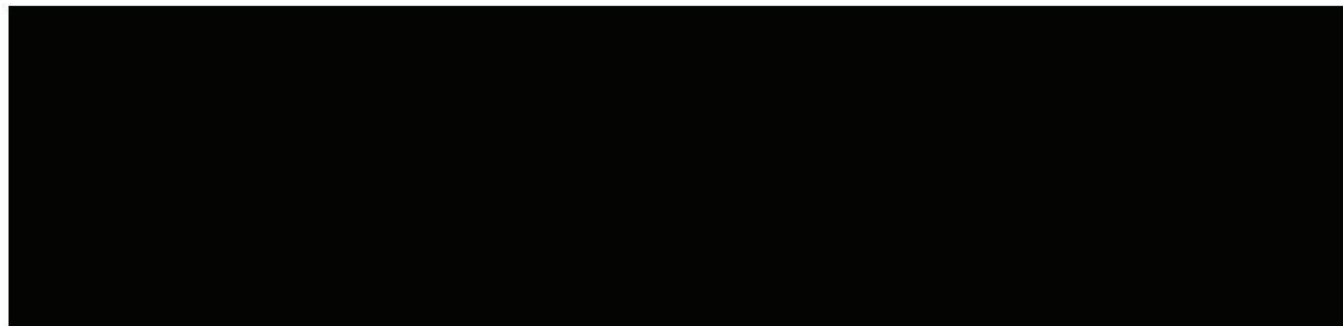
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Hi Claire,

Please see the complete site list with the additional 2 accounts.

Thank you so much for the help.



Thanks,  
Kindra

---

**From:** EV <[ev@sdge.com](mailto:ev@sdge.com)>  
**Sent:** Thursday, January 13, 2022 7:48 PM  
**To:** Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Cc:** Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** RE: [From: External] RE: Application for EV- HP Rate

It would actually be before. The subscription selection is on a go-forward basis. Except this first request will be honored as of 01/04.

If you want to change your subscription, when you call in it will be from that date until the next time you advise us that your new subscription will be in effect. More of a forecast than hindsight.

I have this list, can you provide me the last two and I can certainly gather the cycle numbers.

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[E-mail](#) | [Web Site](#) | [Bio](#)

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---

**From:** Shah, Jigar  
**Sent:** Tuesday, February 22, 2022 5:31 PM  
**To:** 'EV' <[ev@sdge.com](mailto:ev@sdge.com)>; Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Cc:** Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

Hi Claire,

Thank you for your response, and I look forward to constructively engaging further on these concerns.

I'm not sure how Rule 12 is applicable in this case, as this would be a change in subscription / demand level, not a change in rate schedule to which that language applies. Even then, there is a provision that allows SDG&E to apply a rate schedule change, which a subscription update would not be, during mid-cycle for those with interval meters, which all of our sites are. The full paragraph is below, with underlines added for emphasis:

**In the event that a customer desires to take service under a different schedule than that under which the customer is being served and qualifies for service thereunder, the change shall become effective for service rendered after the next regular meter reading following the date of notice to the Utility, based on the availability of metering and billing requirements. Customers with interval data capable meters such as smart meters can request the rate change to occur mid-cycle.**

There is nothing here that prevents SDG&E from applying a subscription update during a billing cycle, especially given the "once per month" EV-HP tariff language I identified earlier. This is fundamentally different than a rate change, as this is an ongoing obligation with month-to-month changes in perpetuity for Electrify America.



The final decision from the CPUC approving the EV-HP rate also explicitly discusses the same scenario we are undergoing. Based on the below, a customer being notified their subscription level being exceeded after a billing cycle concludes, the customer would have the opportunity to immediately increase their subscription level to avoid the ratchet for the new billing cycle in which they were just notified. SDG&E's current implementation does not adhere to this, as the update would only be applicable in the 3<sup>rd</sup> month, and not adhere to the approved decision.

SDG&E proposes to offer up to a three-month grace period if a customer's maximum demand exceeds their subscription level. At the end of the first month in which a customer exceeds their subscription level, SDG&E will notify the customer that their maximum demand exceeded their subscribed demand level. To avoid exceeding their subscription level again, the customer can either increase their subscription level or limit their maximum demand. If the customer's maximum demand continues to exceed their subscription level after another two months, SDG&E will reset their subscription level to align with the customer's actual maximum demand.

In SDG&E's testimony submitted by Brittany Applestein Syz for the EV-HP rate to the CPUC, she explicitly provides testimony that any subscription update can occur for the current billing cycle, versus the next billing cycle. Nothing in subsequent testimony or the CPUC decision seems to deviate from this within reasonableness:

The EV-HP subscription charge will be offered in 25 kW increments. Customers will be able to choose their subscription level based on their forecasted maximum monthly demand. SDG&E plans to allow customers to change their subscription level as close to month-to-month as possible, but billing system constraints may delay changes to the subscribed demand level. For example, changes to the subscription level may not be able to be effectuated until the end of the current monthly billing cycle.

To reiterate, PG&E's implementation allows and encourages a customer to update their subscription level based on realized demand during a billing cycle, and everyone expected that to be the case here too. I appreciate your willingness to consider our concerns, and hope you can take this feedback back internally and we can come to an agreeable means to move forward. The lack of being able to update during the current billing cycle as expected has large cost implications for us as a business given that Electrify America's interconnected power levels are very high, while realized demand is extremely volatile site-by-site and month-by-month as EV adoption materializes.

Thank you again.

**Jigar J. Shah**  
Energy Services



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**From:** EV <[ev@sdge.com](mailto:ev@sdge.com)>

**Sent:** Tuesday, February 22, 2022 4:55 PM

**To:** Shah, Jigar <[REDACTED]@electrifyamerica.com>; Soo, Crystal <[REDACTED]@electrifyamerica.com>

**Cc:** Skinner, Kindra <[REDACTED]@electrifyamerica.com>

**Subject:** [From: External] RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

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Hi Jigar,

Thank you for your message and we are more than willing to help. We recognize that there have been pain points on your side and some of those have lead us to discover inconsistencies or even process improvements going forward. We appreciate your willingness to engage with us and allow us continue to make changes that benefit not only Electrify America but all customers looking to move to EVHP.

[Rule 12](#) states, *"the change shall become effective for service rendered after the next regular meter reading following the date of notice to the Utility, based on the availability of metering and billing requirements."* Unfortunately at this time this tariff is also not applicable to midcycle changes. You may make any subscription changes you wish once per billing period, or otherwise referred to as monthly, ahead of the period you wish to change.

We are currently working to ensure that Electrify America has a better suited option for subscription changes. For now please continue to utilize the direction given for email and subject so we can prioritize your requests. We are aware that a self-service option is the preference and would be beneficial for your business operations. We also understand the inconvenience without it and finding a suitable solution is a priority we are actively working through to ensure smooth processes for you going forward.

I, as well as our management team, are available to have a discussion with you and your team if you would like or if it would be beneficial. Transparency in this process as well as customer satisfaction are two of our utmost priorities and we will continue to adapt and manipulate both our processes and the tariff to further align with those.

Thank you for expressing to us your concerns, they are valid and we hope to alleviate as many as we can with our ongoing partnership.

**Claire Sanfelice**

Customer Engagement Advisor

Clean Transportation

Pronouns: She/Her

W: 858.654.0251



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For more information about privacy at SDG&E visit [sdge.com/privacy](https://sdge.com/privacy).

**From:** Shah, Jigar [REDACTED] <[\[REDACTED\]@electrifyamerica.com](mailto:[REDACTED]@electrifyamerica.com)>

**Sent:** Friday, February 18, 2022 10:42 AM

**To:** EV <[ev@sdge.com](mailto:ev@sdge.com)>; Soo, Crystal [REDACTED] <[\[REDACTED\]@electrifyamerica.com](mailto:[REDACTED]@electrifyamerica.com)>

**Cc:** Skinner, Kindra [REDACTED] <[\[REDACTED\]@electrifyamerica.com](mailto:[REDACTED]@electrifyamerica.com)>

**Subject:** [EXTERNAL] RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

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Hello Claire and SDG&E EV Team,

By way of introduction, I manage Energy Services for Electrify America and I know my team has been engaged with you on enrollment in the EV-HP rate and setting subscription levels. Thank you for your assistance on these matters to date.

However, one thing which has caught my eye is this repeated reference from SDG&E with respect to "insider trading" when Electrify America is requesting to update our subscription levels prior to the end of a billing cycle. I respectfully disagree with this characterization, and believe SDG&E's refusal to date to accommodate this request is in violation of our rights under the CPUC approved EV-HP tariff ([https://tariff.sdge.com/tm2/pdf/ELEC\\_ELEC-SCHEDS\\_EV-HP.pdf](https://tariff.sdge.com/tm2/pdf/ELEC_ELEC-SCHEDS_EV-HP.pdf)).

The approved tariff has the following provisions:

**Customers taking service on Schedule EV-HP will select their preferred kW subscription level.**

**The customer's subscribed power level should exceed their maximum demand. If the maximum demand exceeds the subscription level the subscription level will be increased (see Special Conditions 5). The customer shall pay a monthly subscription charge based on their subscription level**

**4. Subscription Charge: The subscription charge shall consist of increments of 10 kW for customers with maximum demand less than or equal to 150 kW and 25 kW for customers with maximum demand greater than 150 kW. The subscribed power level can be altered once per month**

There is no restriction in the approved tariff that a subscribed power level cannot be altered during a billing cycle. In fact, it explicitly provides that the customer can make such an update "once per month" without specifying that such an update would only be applicable for the next billing cycle as SDG&E has claimed to date.

I testified in the respective proceeding, and at no point in the CPUC approved decision or in prior SDG&E testimony does it require a customer to be forecasting demand levels a full billing cycle in advance. In fact, for PG&E, the other utility which has implemented a very similar subscription EV rate, there are explicit overage notifications provided to the customer so that they can update their subscription levels before the billing cycle ends. Our complaints there focus on outdated overage alerts that may miss spikes towards the end of a billing cycle.

Electrify America's interconnected power levels are very high, while realized demand is extremely volatile site-by-site and month-by-month as EV adoption materializes. The inability for us to be able to update subscription levels at the end of a billing cycle results in material operational cost increases, especially if we are ratcheted up per Special Condition 5. I hope you can reassess your implementation of the EV-HP rate to account for the tariff language the CPUC has explicitly approved without additional restrictions, including providing a more reasonable means to update subscription levels on a regular basis through the customer portal with an associated confirmation given the financial impact this will have on our business. Electrify America is willing to escalate this upwards to SDG&E management and potentially to the Commission as warranted given the long-term associated impacts based on your response.

Thank you for your consideration of these concerns.

**Jigar J. Shah**  
Energy Services





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**From:** EV <[ev@sdge.com](mailto:ev@sdge.com)>  
**Sent:** Thursday, February 10, 2022 5:01 PM  
**To:** Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Cc:** Shah, Jigar <[REDACTED]>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** [From: External] RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

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Hi All!

Sorry for the delay, I have been following up a few places. Ms Crystal, please see my responses in green below:

1. When I called in to make Electrify America's demand subscriptions, the wait was over an hour and I was not able to reach a representative - good thing this happened on 1/31 so I still had 2/1 to reach someone. In the future, I won't be able to do this, so we'll need to find a direct contact or an online portal to quickly enter the numbers. We're sorry for the long hold time and hassle when you got through. I have brought this pain point up with everyone involved and we may see it change in the future to be more self-serve or direct contact. I appreciate you letting me know about it. For now you won't have to call you may send an email.
2. When I reached a representative to call in our demand subscriptions, they told me calling it in is for customers with 5 or fewer accounts, so Electrify America with its [REDACTED] accounts (with more to come), would not be the type of customer required to call it in. Also, the rep said it is not definitive that EV-HP customers need to subscribe by the first day of the billing cycle to avoid insider trading. Can you please help us identify any SDG&E team members who can coordinate a way to subscribe at the end of the billing cycle? This would make sense for SDG&E as well, because it would ensure that the subscription is consistent with the data and in time for the cycle's bill. I was unaware of this limitation but included it in my addressing of the call volume as well. You cannot change the subscription at the end. It's not that you'd need to subscribe on the first day of the cycle, it's that you cannot retroactive a change. If you want to make a change, you must notify us prior to the date of change you desire / the only changes to the subscription level would be on a go-forward basis. As of right now the easiest way to ensure your changes are honored on time is that the change will be effective billing cycle to billing cycle. For the initial change into the pricing plan you saw it go back to 1/4/22 but any other changes would be on your read date after request. These changes ensure that you are not already privy to your usage and then making changes, constituting my likening to insider trading. You can estimate and utilize any software you want to get extremely accurate demand data but changes would still be forecasting.
3. Because of #2, the representative shared an email, which I have shared below, to make our January and February

subscriptions. The issue here though, is that the rep has said the turnaround time for this email account can be up to 1 week, which is not doable because we need to quickly enter the numbers either through a direct contact or online portal. The response time for our Special Services Desk varies and currently turnaround time is approximately 8-9 business days. This is not to say that you will see a delay. Your date of request will be honored as of the next billing date. Submission of March subscriptions now would ensure they take effect at the start of your next billing cycle. Submission after the cycle 21 read date, will take effect beginning in April. For these EVHP subscription change requests, if you could please type RATE SUPPORT in the subject line to flag those emails Special Services Desk can forward right away to Billing for processing.

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**From:** Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Sent:** Tuesday, February 8, 2022 1:31 PM  
**To:** EV <ev@sdge.com>  
**Cc:** Shah, Jigar <[REDACTED]>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** [EXTERNAL] RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

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Hi Claire,

How's it going? Have you heard back on the status of our Jan and Feb EV-HP subscriptions as well as a more doable process for us to enter our subscriptions for each billing cycle?

Thanks,  
 Crystal

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**From:** Soo, Crystal  
**Sent:** Wednesday, February 2, 2022 5:20 PM  
**To:** 'EV' <ev@sdge.com>  
**Cc:** Shah, Jigar <[REDACTED]@electrifyamerica.com>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

Okay this clarifies it, since we haven't seen bills for these sites either.

Thanks,  
 Crystal

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**From:** EV <ev@sdge.com>  
**Sent:** Wednesday, February 2, 2022 5:14 PM  
**To:** Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Cc:** Shah, Jigar <[REDACTED]@electrifyamerica.com>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** [From: External] RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

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You are! Sorry to make you wait.

I learned Monday these accounts are not energized or actively billing. You are correct, their data should be available

0010

if they were.

Is this in error?

---

**From:** Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Sent:** Wednesday, February 2, 2022 2:00 PM  
**To:** EV <ev@sdge.com>  
**Cc:** Shah, Jigar <[REDACTED]>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** [EXTERNAL] RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

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Hi Claire,

Thanks for your update. I look forward to hearing back from you.

We are also still waiting on the follow-up inquiry into the sites below with unknown meter numbers, specifically, are these sites energized? If so, is there AMI data you can share from Nov 2021 to present? If the sites are energized, would they show up under the customer account or would we need to add them somehow?

Thanks,  
Crystal

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**From:** EV <ev@sdge.com>  
**Sent:** Wednesday, February 2, 2022 4:54 PM  
**To:** Soo, Crystal <[REDACTED]@electrifyamerica.com>  
**Cc:** Shah, Jigar <[REDACTED]>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>  
**Subject:** [From: External] RE: Electrify America Jan/Feb 2022 EV-HP Subscriptions

**CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi there Ms Crystal,

I am so sorry to hear about this hassle for you. I am happy to find the right people on our side to mitigate these in the future for you.

I'd like to investigate some of the issues that you've brought up and it might take a day or two to find the right people.

I will be in touch as soon as I can with help.

Claire

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**From:** Soo, Crystal <[REDACTED]@electrifyamerica.com>

**Electrify America 0010**



Sent: Wednesday, February 2, 2022 1:46 PM

To: EV <ev@sdge.com>

Cc: Shah, Jigar <[REDACTED]>; Skinner, Kindra <[REDACTED]@electrifyamerica.com>

Subject: [EXTERNAL] FW: Electrify America Jan/Feb 2022 EV-HP Subscriptions

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Hi Claire,

I hope your week is going well. While making the EV-HP demand subscriptions for Electrify America, I ran into some significant challenges. We'll need to figure out a consistent and reliable process that will ensure the monthly subscription process is seamless and doable. Would you be able to connect us with anyone on the SDG&E team who can help address some of the following challenges we faced while subscribing?

1. When I called in to make Electrify America's demand subscriptions, the wait was over an hour and I was not able to reach a representative - good thing this happened on 1/31 so I still had 2/1 to reach someone. In the future, I won't be able to do this, so we'll need to find a direct contact or an online portal to quickly enter the numbers.
2. When I reached a representative to call in our demand subscriptions, they told me calling it in is for customers with 5 or fewer accounts, so Electrify America with its [REDACTED] accounts (with more to come), would not be the type of customer required to call it in. Also, the rep said it is not definitive that EV-HP customers need to subscribe by the first day of the billing cycle to avoid insider trading. Can you please help us identify any SDG&E team members who can coordinate a way to subscribe at the end of the billing cycle? This would make sense for SDG&E as well, because it would ensure that the subscription is consistent with the data and in time for the cycle's bill.
3. Because of #2, the representative shared an email, which I have shared below, to make our January and February subscriptions. The issue here though, is that the rep has said the turnaround time for this email account can be up to 1 week, which is not doable because we need to quickly enter the numbers either through a direct contact or online portal.

Please let me know when you are able to assist with this, so that we can keep in touch while a doable process for EV-HP subscriptions is being identified. Any information regarding the status of the January and February demand subscriptions will be appreciated, as I have not received any updates on whether they have been completed.

Thanks,  
Crystal

**Crystal Soo**  
Energy Specialist



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0012

**From:** Soo, Crystal  
**Sent:** Tuesday, February 1, 2022 11:49 AM  
**To:** 'Specialservicesdesk@sdge.com' <[Specialservicesdesk@sdge.com](mailto:Specialservicesdesk@sdge.com)>  
**Cc:** Shah, Jigar [REDACTED]  
**Subject:** Electrify America Jan/Feb 2022 EV-HP Subscriptions

Hello,

I am completing the EV-HP rate demand subscriptions on behalf of Electrify America. The following are our subscription selections for the January and February billing cycles.



For future billing cycles, can we share our subscription selections at the end of the billing cycle? Please let me know if you need additional information.

Regards,  
Crystal

**Crystal Soo**  
Energy Specialist



**Electrify America 0012**

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